

The Board agrees with the Judge's analysis and conclusion that the opinion of Dr. Frank K. Galbraith, who is a podiatrist and foot specialist, is persuasive that claimant has developed plantar fasciitis as a result of working for respondent. In a November 14, 2001 letter to claimant, the doctor wrote, in part:

You were initially seen on August 20 for painful right plantar fasciitis. You related on the first visit that your foot became painful pulling large bags of trash at the hospital on July 17. This was a work related injury.

As you know, we have tried several things to help eliminate the pain. I think that obesity is making it difficult for you to improve, but you related on November 7 that you are on a calorie diet plan.

The doctor's description of the start of claimant's foot symptoms is consistent with claimant's testimony.

Respondent and its insurance carrier do not contest that claimant's injury occurred in the course of employment. But they do contest that the injury was related to claimant's work. The Board, however, agrees with the Judge it is more probably true than not that claimant sustained personal injury by accident arising out of and in the course of employment with respondent.

Only those accidents that arise out of and in the course of employment are compensable under the Workers Compensation Act.¹

For an accident to arise out of employment, there must be a causal connection between the accident and the nature, conditions, obligations, or incidents of the employment.² The requirement that the accident occur in the course of employment relates to the time, place, and circumstances under which the accident occurred and means the accident happened while the worker was working for the employer.³ In *Newman*, the Kansas Supreme Court held:

The two phrases, arising "out of" and "in the course of" the employment, as used in our workmen's compensation act (K.S.A. 1972 Supp. 44-501), have separate and distinct meanings, they are conjunctive and each condition must exist before compensation is allowable. The phrase "in the course of" employment relates to the time, place and circumstances under which the accident occurred, and means the injury happened while the workman was at work in his employer's service. The phrase "out of" the employment points to the cause or origin of the accident and requires some causal connection between the accidental injury and the employment. An injury arises "out of" employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal connection between the conditions under

¹ See K.S.A. 44-501.

² See *Newman v. Bennett*, 212 Kan. 562, 512 P.2d 497 (1973); *Martin v. U.S.D.* No. 233, 5 Kan. App. 2d 298, 615 P.2d 168 (1980); and *Hensley v. Carl Graham Glass*, 226 Kan. 256, 597 P.2d 641 (1979).

³ See *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197, 198, 689 P.2d 837 (1984).

which the work is required to be performed and the resulting injury. An injury arises “out of” employment if it arises out of the nature, conditions, obligations and incidents of the employment.⁴

Whether an accident arises out of and in the course of a worker’s employment depends upon the facts peculiar to the particular case.⁵ And in this instance, the Board concludes claimant’s foot injury more likely than not occurred due to the trauma sustained on July 17, 2001, while claimant was moving respondent’s large bags of trash, which was one of claimant’s job duties. Accordingly, there is a causal relationship between the injury and claimant’s work activities.

The Workers Compensation Act places the burden of proof on claimants to establish their right to compensation.⁶ And that burden is to persuade the trier of facts by a preponderance of the credible evidence that claimants’ position on an issue is more probably true than not when considering the whole record.⁷

Claimant has satisfied that burden of proof. Therefore, the request for benefits should be granted.

WHEREFORE, the Board affirms the November 15, 2001 Order entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of January 2002.

BOARD MEMBER

c: Christopher Randall, Attorney for Claimant
Wade A. Dorothy, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Philip S. Harness, Workers Compensation Director

⁴ *Newman, ibid.*, syl. 1.

⁵ *Newman, ibid.*, syl. 3, citing *Carter v. Alpha Kappa Lambda Fraternity*, 197 Kan. 374, 417 P.2d 137 (1966).

⁶ K.S.A. 44-501(a).

⁷ K.S.A. 44-508(g).